

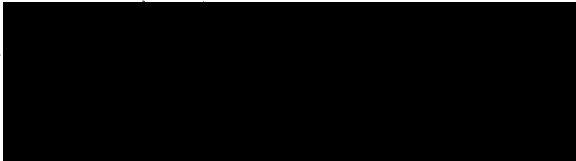
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invasion of personal privacy**

**U.S. Department of Homeland Security  
Citizenship and Immigration Services**

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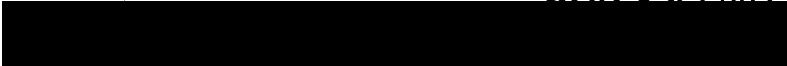
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536



FILE: 

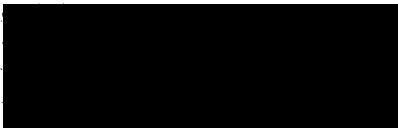
Office: MADRID, SPAIN

Date: **JAN 09 2004**

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Madrid, Spain. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Portugal who was found by a consular officer to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission into the United States by fraud or willful misrepresentation of a material fact. The applicant is the son of two legal permanent residents of the United States and is the beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140, EAC-00-010-54660). The applicant seeks a waiver of inadmissibility in order to travel to the United States to reside with his lawful permanent resident parents and work at [REDACTED] Inc. as authorized.

The officer in charge (OIC) concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] erred in denying the applicant's waiver request and in failing to find extreme hardship when CIS ignored the medical and psychological impact to the applicant's mother and when it failed to actually consider the impact of separation.

The record contains a sworn statement by the applicant's mother, Isabel Ferreira, dated March 12, 2002; copies of the permanent resident cards of the applicant's parents and sister; a letter from the University of Connecticut confirming that the applicant's sister attends the university; a letter from the doctor treating the applicant's mother, dated April 23, 2001; notes taken by a psychiatrist in psychologically evaluating the applicant's mother and a letter from the psychiatrist, dated May 25, 2001.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection

(a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant applied for admission to the United States as a nonimmigrant visitor under the Visa Waiver Program (VWP) on May 21, 2000. The applicant admitted to immigration officials that he had been living and working in the United States while present on a visitor visa previously and was denied entry into the United States. During an interview with a consular officer in Lisbon, Portugal on December 7, 2001, the applicant admitted to making false statements to immigration officials on February 19, 2000, his second entry to the United States on the VWP. The applicant told officials on February 19, 2000 that the purpose of his trip was vacation when, in fact, he intended to work and reside in the United States after entering. The consular officer found the applicant inadmissible under section 212(a)(6)(C)(I) of the Act for having procured and sought to procure admission to the United States by willfully misrepresenting a material fact.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999), the Board of Immigration Appeals (BIA) provides a list of factors it deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. See *Cervantes-Gonzalez* at 565-566.

Counsel asserts that the applicant's mother is suffering from depression as a result of the applicant's inadmissibility to the United States. The depression has prevented the applicant's mother from working full-time and has exacerbated symptoms related

to her pre-existing diabetes. See Sworn Statement by [REDACTED]. The doctor treating the applicant's mother for diabetes referred her for a psychological evaluation with a psychiatrist. The record contains only copies of the psychiatrist's notes from that session and a brief letter indicating that the applicant's mother is depressed as a result of the applicant's inability to obtain a visa. The record does not establish an ongoing relationship between the psychiatrist and the applicant's mother or any ongoing treatment in the form of further sessions with a psychiatrist. The letter from the evaluating psychiatrist indicates that the applicant's mother, referred to by him as [REDACTED] was prescribed an antidepressant medication. See Letter from [REDACTED] dated May 25, 2001. The record does not establish whether or not the medication has stabilized Mrs. Ferreira's psychological condition.

Counsel contends that Mrs. [REDACTED] is unable to relocate to Portugal to be with her son because she must remain with her husband and daughter in the United States. The record establishes that Mrs. [REDACTED] daughter is currently enrolled in college and does not indicate specific reasons that her adult daughter requires care from her mother. The record does not make any assertions regarding financial hardship to Mrs. [REDACTED] as a result of relocation to Portugal. Mrs. [REDACTED] a legal permanent resident of the United States, is not required to depart from the United States as a result of denial of the applicant's waiver application. However, relocation to Portugal would enable the applicant's mother to be reunited with her son, which, according to the record, would improve her medical condition considerably.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's mother will endure hardship as a result of separation from her son. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of

proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.